UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2002/18
27 February 2002

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 4 of the provisional agenda

REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS

Report of the High Commissioner submitted pursuant to General Assembly resolution 48/141

Human rights: a uniting framework

GE.02-11021 (E) 050302

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Introduction

1. Human insecurity is a major preoccupation of today's world. The horrific terrorist acts of 11 September on the United States and their aftermath raised levels of anxiety and insecurity worldwide. Ensuring security for every human being around the globe is one of the major challenges facing us today. In addressing these concerns, we need to enhance the search for common ground. Human rights provide such a ground. Respect for human life and respect for human dignity are values shared by all cultures and religions. Over the last 50 years, States have successfully translated these values into comprehensive universal norms. These global human rights standards have survived the cold war, armed conflict and economic instability. They provide States with red and green lights to guide their actions. The Commission on Human Rights has a specific role to play today, as it has in the past, in promoting respect for human rights as a uniting framework in the face of the insecurities now confronting us.

2. Terrorism is a threat to the most fundamental human right, the right to life. The elaboration of a common approach to counter terrorism serves human rights. As United Nations High Commissioner for Human Rights, I share the legitimate concern of States that there should be no avenue for those who plan, support or commit terrorist acts to find safe haven, avoid prosecution, secure access to funds, or carry out further attacks. Security Council resolution 1373 (2001) creates an important framework for action in this regard.

3. Although terrorism has yet to be defined comprehensively and authoritatively at the international level, States have already agreed on some core elements. The General Assembly, in the Declaration on Measures to Eliminate International Terrorism, adopted by the Assembly in the annex to its resolution 49/60 of 9 December 1995, declared that "criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances unjustifiable, whatever the consideration of a political, philosophical, ideological, racial, ethnic, religious, or other nature that may be invoked to justify them". Numerous conventions deal with various acts of terrorism. A comprehensive convention on terrorism such as that being debated at the General Assembly could provide a further basis for international action. The consistency of the provisions of this future convention with human rights law, humanitarian law and refugee law will help to attract global support.

4. In addition to being terrorist acts, the large-scale nature of the 11 September attacks and the fact that they were directed against the civilian population would qualify them as crimes against humanity. All States that are victims of crimes against humanity may employ a variety of legal measures to pursue the perpetrators and their accomplices. Under international criminal law, individuals can be prosecuted for their participation in crimes against humanity. Indeed, the international nature of this crime creates a duty on all States to assist in the prosecution of suspects. International law also specifies that there is no statute of limitation for crimes against humanity. Therefore, someone suspected of such a crime could be prosecuted at any time in the future. Crimes against humanity are also subject to universal jurisdiction. This means that any State may pursue, arrest and prosecute persons suspected of being involved in the 11 September attacks.

5. An effective international strategy to counter terrorism should use human rights as its unifying framework. The suggestion that human rights violations are permissible in certain circumstances is wrong. The essence of human rights is that human life and dignity must not be compromised and that certain acts, whether carried out by State or non-State actors, are never justified no matter what the ends. International human rights and humanitarian law define the boundaries of permissible political and military conduct. A reckless approach towards human life and liberty undermines counter-terrorism measures.

6. The subject of human rights and terrorism has been the focus of several resolutions of the Commission on Human Rights in recent years, the latest being 2001/37. The Sub-Commission on the Promotion and Protection of human rights has mandated one of its members to carry out an in-depth analysis of this subject; its Special Rapporteur, Kalliopi K. Koufa, has already submitted a preliminary report (E/CN.4/Sub.2/1999/27) and a progress report (E/CN.4/Sub.2/2001/31).

7. The promotion and protection of human rights is central to an effective strategy to counter terrorism. This report to the Commission addresses policies and strategies that would ensure that human rights operate as a unifying framework for action against terrorism. The elements of this strategy include ensuring that the fair balances built into human rights law are at the centre of the overall counter-terrorism efforts. Other essential components of this strategy are addressing in parallel the broader issue of human insecurity, particularly the need to enhance international cooperation, to take prevention seriously, to reinforce equality and respect, and to fulfil human rights commitments.

I. THE BALANCE BETWEEN HUMAN RIGHTS AND SECURITY

8. On 10 December 2001, on the occasion of Human Rights Day, 17 special rapporteurs and independent experts of the Commission on Human Rights issued a joint statement reminding States of their obligations under international law to uphold human rights and fundamental freedoms in the context of the aftermath of the tragic events of 11 September 2001. The special rapporteurs and experts expressed their deep concern over anti-terrorist and national security legislation and other measures adopted or contemplated that might infringe upon the enjoyment by all of their human rights and fundamental freedoms. They warned against human rights violations and measures that have targeted particular groups such as human rights defenders, migrants, asylum-seekers and refugees, religious and ethnic minorities, political activists and the media. They addressed their concerns to the relevant authorities, requesting them to take appropriate action to guarantee respect for human rights and fundamental freedoms. The special rapporteurs and experts particularly reminded States of the fundamental principle of non-discrimination under which everyone is entitled to all rights and freedoms "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

9. Ensuring that innocent people do not become the victims of counter-terrorism measures should be an important component of the anti-terrorism strategy. This requires that States adhere strictly to their international obligations to uphold human rights and fundamental freedoms. Counter-terrorism strategies pursued before and after 11 September have sometimes undermined efforts to enhance respect for shared human rights values. Excessive measures have been taken

in several parts of the world that suppress or restrict individual rights including privacy rights, freedom of thought, presumption of innocence, fair trial, the right to seek asylum, political participation, freedom of expression and peaceful assembly. In order to construct the solid human rights culture required to root out terrorism, there is a need to bridge the gulf between human rights norms and their application in reality.

10. Human rights law strikes a fair balance between legitimate national security concerns and fundamental freedoms in each case. These balances are reflected in the International Covenant on Civil and Political Rights (ICCPR), the European Convention for the Protection of Human Rights and Fundamental Freedoms, the American Convention on Human Rights, the African Charter on Human and Peoples' Rights, and the Arab Charter on Human Rights.

11. Human rights law, notably ICCPR article 4, requires that certain rights may not be derogated from under any circumstances. These rights include the right to life, freedom of thought, conscience and religion, freedom from torture or cruel, inhuman or degrading treatment, and the principles of precision and of non-retroactivity of criminal law except where a later law imposes a lighter penalty. Derogation from other rights is only permitted in the special circumstances defined in international human rights law: any such measures must be of exceptional character, strictly limited in time and to the extent required by the exigencies of the situation, subject to regular review, consistent with other obligations under international law and not involve discrimination. Where derogation is invoked, there is an obligation to notify other States parties through the Secretary-General and to indicate the provisions from which a State has derogated and the reasons for such derogation.

12. Even during an armed conflict, measures derogating from provisions of treaties such as ICCPR are permitted only if and to the extent that the situation constitutes a threat to the life of the nation. Even then, States should carefully consider the justification for and legitimacy of the measure in the circumstances. In its General Comment No. 29 (CCPR/C/21/Rev.1/Add.11), the Human Rights Committee developed a list of elements that cannot be subject to lawful derogation. These elements include the following: all persons deprived of liberty must be treated with respect for their dignity; the prohibition against hostage-taking, abduction, or unacknowledged detention; the protection of persons belonging to minorities; the prohibition of unlawful deportation or transfer of population; and that "no declaration of a state of emergency ... may be invoked as justification for a State party to engage itself ... in propaganda for war, or in advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence" (ibid., para. 13).

13. The right to a fair trial during armed conflict is explicitly guaranteed under international humanitarian law. As the Human Rights Committee clarified in its General Comment No. 29, the principles of legality and the rule of law require that fundamental requirements of fair trial be respected during a state of emergency. The Committee stressed that it is inherent in the protection of rights explicitly recognized as non-derogable in article 4 (2) that they must be secured by procedural guarantees, including, often, judicial guarantees. The provisions of the Covenant relating to procedural safeguards may never be made subject to measures that would circumvent the protection of non-derogable rights. In particular, any trial leading to the imposition of the death penalty during a state of emergency must conform to the provisions of the ICCPR, including those on fair trial. These include the right to equality before the courts and

tribunals; the right to a fair hearing by a competent, independent and impartial tribunal; the presumption of innocence; the right to be informed promptly and in detail in a language which the accused understands of the nature and cause of the charge against him or her; the right to communicate with a counsel of choice; the right to examine witnesses and secure the attendance and examination of witnesses on behalf of the accused; and the right not to be compelled to testify against oneself or to confess guilt.

14. In addition, human rights law requires that, in the exceptional circumstances where it is permitted to limit some rights for legitimate and defined purposes other than emergencies, the principles of necessity and proportionality must be applied. The measures taken must be appropriate and the least intrusive to achieve the objective. The discretion granted to certain authorities to act must not be unfettered. The principle of non-discrimination must always be respected and special effort made to safeguard the rights of vulnerable groups. Anti-terrorism measures targeting specific ethnic or religious groups is contrary to human rights and would carry the additional risk of an upsurge of discrimination and racism.

15. The Human Rights Committee has made a number of other policy statements that could assist Governments in taking counter-terrorism measures that are consistent with their human rights obligations. For example, the Committee has repeatedly raised concerns, in the context of States' adherence to article 9 of the ICCPR (right to liberty and security of the person), over the tendency to extend and broaden powers of arrest and detention. It has stated that the period of custody before an individual is brought before a judge or other officer may not exceed a "few days". The Committee has also often criticized the extension of the jurisdiction of military courts to civilians and the use of "faceless judges", in the context of its examination of articles 14 and 15 on the right to a fair trial

16. Torture is absolutely prohibited under any circumstances. Article 2 (2) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states that "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture." Article 3 of the Convention also provides an absolute prohibition on expelling, returning or extraditing a person to another State where there is risk of torture. In several instances, the Committee against Torture noted that most allegations of torture relate to individuals who have been accused or convicted of terrorist acts. The Committee has identified a number of measures that commonly contribute to the practice of torture. These include the wide scope of arrest and detention powers granted to the police; overlapping of jurisdiction of various police and security agencies; secret detention; lack of or inadequate legal infrastructure to deal with allegations of torture; the existence of extensive pre-trial detention powers; the use of administrative or preventive detention for prolonged periods of time; the lack of a central registry of detainees; interference with the prosecutor's powers to investigate allegations of torture; and the denial of access to lawyers, family and medical personnel.

17. On 22 November 2001, the Committee against Torture issued a statement (CAT/C/XXVII/Misc.7) reminding States parties to the Convention of the non-derogable nature of most of the obligations undertaken by them in ratifying the Convention. After condemning utterly the terrorist attacks of 11 September and expressing its "profound condolences to the victims, who were nationals of some 80 countries, including many States parties to the

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", the Committee highlighted the obligations contained in article 2, mentioned above, article 15, prohibiting confessions extorted by torture being admitted in evidence, except against the torturer, and article 16, prohibiting cruel, inhuman or degrading treatment or punishment. The Committee stated that such provisions must be observed in all circumstances. The Committee expressed its confidence that "whatever responses to the threat of international terrorism are adopted by States parties, such responses will be in conformity with the obligations undertaken by them in ratifying the Convention against Torture".

18. Persons under 18 years of age enjoy the full range of rights provided in the Convention on the Rights of the Child. This Convention, which has been ratified by almost every State in the world, does not allow for derogation from rights. As article 38 clearly states, the Convention is applicable in emergency situations. All the rights of the child embodied in the Convention must be protected even in times of emergency. Particularly significant is the recognition that every child has the inherent right to life. This includes the prohibition against imposing death sentences for crimes committed by persons below 18 years of age, which should not be disregarded at any time. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) are also relevant.

II. THE RIGHTS OF REFUGEES AND MIGRANTS: A SPECIAL CONCERN

19. Refugees and migrants were already vulnerable in various parts of the world before 11 September, and they became even more vulnerable afterwards. There is no doubt that States have a right, even a duty, to ensure that their territory does not become a safe haven for terrorists, and that rights and freedoms are not cynically abused by citizens and aliens alike to nourish terrorist acts. However, those asylum-seekers who are fleeing genuine persecution and violence, often including acts of terrorism, should not become the victims of harsh anti-terrorism policies. Migrants, even if undocumented, also have the right to be protected from violence, discrimination and excessive measures. OHCHR activities marking Human Rights Day 2001 included an expert panel focusing on the situation of refugees and migrants post-11 September. The panel was organized jointly with the Office of the United Nations High Commissioner for Refugees (UNHCR). It took place in the context of the follow-up to the Durban Declaration and Programme of Action (A/CONF.189/12, Chap. I) adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

20. In the Durban Declaration States affirmed their commitment to respect and implement humanitarian obligations relating to the protection of refugees, asylum-seekers, returnees and internally displaced persons. The Declaration notes the importance of international solidarity, burden sharing and cooperation for the protection of refugees and reaffirmed that the 1951 Convention relating to the Status of Refugees and its 1967 Protocol remain the foundation of the international refugee regime.

21. UNHCR has stressed that proper implementation of the provisions of the 1951 Refugee Convention leads to the exclusion from refugee protection of persons with respect to whom there are serious reasons for considering that he or she has committed a crime against peace, a war crime, or a crime against humanity, or serious non-political crimes, or acts contrary to the purposes and principles of the United Nations. Serious non-political crimes are commonly

interpreted to include terrorist acts. UNHCR, however, has emphasized that whether an individual is implicated in such crimes should be determined on a case-by-case basis. Therefore, there should be no summary or wholesale rejection of asylum claims at borders or points of entry as that may amount to refoulement. Each case should be determined on its own merits, and each person seeking asylum should undergo individual refugee status determination. Although human rights law does not preclude restrictions on the movements of asylum-seekers under certain circumstances, proposals to introduce automatic detention of all asylum-seekers entering illegally or coming from particular countries for fear of terrorism could amount to an excessive and discriminatory response.

22. There are currently 143 States parties to the Convention relating to the Status of Refugees and/or the Protocol. Last year, the international community commemorated the fiftieth anniversary of the Convention. To mark that occasion, a ministerial-level conference took place in Geneva on 12 and 13 December 2001. I participated in this meeting, which was attended by 156 States and a large number of intergovernmental and non-governmental organizations. The participants adopted a Declaration reaffirming their commitment to "implement [their] obligations under the 1951 Convention and/or its 1967 Protocol fully and effectively" and acclaiming the treaty as one of "relevance and resilience" and of "enduring importance". This public affirmation by States is noteworthy, particularly at a time when the Convention is being criticized by some States as outdated in the wake of the terrorist threats.

23. In preparation for the fiftieth anniversary, UNHCR undertook Global Consultations on International Protection. OHCHR supports the draft Agenda for Protection resulting from that process. The Agenda includes strengthening the implementation of the Convention, ensuring protection of refugees within broader migration movements, improving burden sharing among receiving countries, handling security-related concerns more effectively, and redoubling efforts to find long-lasting solutions for refugees.

24. In order to eliminate manifestations of racism and xenophobia against migrants, the Durban Declaration highlights the importance of creating conditions conducive to greater harmony, tolerance and respect between migrants and the rest of society in the countries in which migrants find themselves. The Programme of Action encourages States to promote education on the human rights of migrants and to engage in information campaigns to ensure that the public receives accurate knowledge regarding migrants and migration issues, including on the positive contribution of migrants to the host society and the vulnerability of migrants, particularly those in an irregular situation. Reinforcing the work of the Special Rapporteur on the human rights of migrants and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance is also an integral part of giving effect to the Durban Declaration and Programme of Action.

25. It is encouraging that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which was adopted in New York on 18 December 1990, should soon come into force.[1] This will take place three months after the twentieth instrument of ratification or accession is deposited. Nineteen States are now party to this Convention and there are 11 signatories. It is important that this convention come into force as soon as possible, and I call on States to consider ratifying it. The Convention envisages the

establishment of a treaty body, to be known as the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Committee will be composed initially of 10 experts and will examine States parties' reports on the legislative, judicial, administrative and other measures taken by States parties to give effect to the Convention.

III. HUMAN RIGHTS: THE UNIFYING STRATEGY

26. Although the causes and the consequences are different, the feeling of personal insecurity is common to most people in the world today. People do feel insecure because of threats of terrorism; many also experience insecurity for other reasons such as armed conflict, racial discrimination, injustice, arbitrary detention, torture, rape, extreme poverty, HIV/AIDS, job insecurity and environment degradation. Around the world, people feel insecure when their rights and the rights of others are at risk. Applying a broader definition of security places freedom from pervasive threats to rights at the centre of security analysis.

27. The Human Development Report 1994 advanced the notion of human security as a core operational concept in tackling global uncertainty. The value of this concept is that it places the human person at the centre of the security debate. The commitment to human security underlines much of United Nations action in the areas of peace and security, crime prevention and development, among others. The concept has now been adopted as the foreign policy doctrine of several States and advanced by some regional organizations, non-governmental organizations and academic institutions.

28. Achieving global security requires a comprehensive strategy to address the causes of insecurity, not only its consequences and manifestations. This strategy must place individuals and their universal rights at the centre of national and global security policies.

A. Enhancing international cooperation

29. Security Council resolution 1373 (2001) underscored the responsibility of all States to eradicate terrorism. It required all States to take a wide range of legislative, procedural, economic, and other measures to prevent, prohibit and criminalize terrorist acts.[2] The resolution, which was adopted under Chapter VII of the Charter of the United Nations, is binding on all Member States. It stressed the need for international cooperation to tackle terrorism and established a committee of the Security Council to monitor its implementation. States were requested to report to the committee by 28 December 2001 on the steps they have taken to implement the resolution.

30. The Committee, known as the Counter-Terrorism Committee, is composed of the 15 Council members. On 26 October 2001, a note was issued containing "Guidance for the submission of reports pursuant to paragraph 6 of Security Council resolution 1378 (2001) of 28 September 2001". To assist the Committee in its work and to avoid the misapplication of the resolution, OHCHR has formulated proposals for "Further guidance" to assist States in complying with their international human rights obligations. Proposals for "Further guidance" are annexed to this report.

31. As of 31 January 2002, 134 States had submitted reports to the Counter-Terrorism Committee. Paragraph 6 of resolution 1373 (2001) refers to the Committee's role in monitoring the implementation of this resolution "with the assistance of appropriate expertise". The experts are tasked with analysing States' reports and submitting their findings to the Committee. The Committee has indicated its intention to seek expertise principally in the area of legislative drafting, financial law and practice, customs law, immigration law, extradition law, police and law enforcement work, and illegal arms trafficking. Several of these areas have a strong human rights dimension. Owing to the serious human rights concerns that could arise from the misapplication of resolution 1373 (2001), it would be desirable that a human rights expert assists the Committee.

32. A comprehensive strategy to address terrorism requires tackling insecurities at their root. The international conferences that took place in the 1990s concluded that human rights, sustainable development, women's rights and environmental issues should be at the heart of States' policies and action. Maintaining the international consensus built around these agendas is an indispensable means of addressing the causes of insecurity. This requires the mobilization of resources.

33. Progress can be made when States commit themselves to cooperate in tackling common concerns. During the cold war, international relations were characterized by tension and the adoption of adversarial positions. Ideological as well as real walls kept countries apart. Each camp defined itself and its interests in terms of being against the other. Following the end of the cold war, States came to recognize that they have shared interests and concerns and that they need to work together to address them. Divisive walls should not be reconstructed between nations.

34. In addition to the mechanisms created by the Commission on Human Rights, the treaty bodies and OHCHR's work on technical cooperation, OHCHR recently embarked on a process to assist various regions in identifying their specific human rights needs and strategies to address them. Useful consultations were held in Geneva on strategies for African and Central and South American countries. A meeting for European and Central Asian countries was also held in Dubrovnik, in collaboration with the Council of Europe and the Organization for Security and Cooperation in Europe. These consultations were attended by States, non-governmental organizations and human rights experts. To assist in the implementation of such strategies, I have placed human rights representatives in the headquarters of the regional economic commissions in Bangkok, Beirut, Santiago, and Addis Ababa, and also in Pretoria. The Subregional Centre for Human Rights and Democracy in Central Africa, in Yaounde, will serve nine countries of the Subregion. Such an approach takes into account national and regional concerns and assists States in discharging their duty to promote and protect all human rights and fundamental freedoms.

B. Taking prevention seriously

35. In his report to the General Assembly and Security Council on the prevention of armed conflict (A/55/985-S/2001/574 and Corr.1), the Secretary-General pledged to move the United Nations from a culture of reaction to a culture of prevention. Following this report, the

Security Council adopted resolution 1366 (2001) inviting the Secretary-General to refer to the Council information and analyses from within the United Nations on cases of serious violations of international law, including international human rights and humanitarian law.

36. According to the Carnegie Commission on Preventing Deadly Conflict, cited in the Secretary-General's report, strategies for prevention fell into two categories: operational and structural. Operational prevention refers to measures taken to confront immediate crises, while structural prevention refers to measures that could be taken to ensure that crises do not arise in the first place, or do not recur.

37. The prevention of terrorism requires both operational and structural responses. The range of measures required of States under Council resolution 1373 (2001) are focused primarily on operational prevention. Structural prevention of terrorism requires a more comprehensive strategy that considers the root causes of insecurity and, therefore, conflict. In other words, it is not adequate to respond only to the apparent causes of violence; it is imperative to address the underlying conditions that lead individuals and groups to violence. There is no doubt that claims of domination, discrimination and denigration of groups and individuals are often the triggering factors.

38. In times of insecurity, adhering to rules and principles becomes a stabilizing factor. Ensuring respect for humanitarian law, in particular the four Geneva Conventions of 1949 and their 1977 Additional Protocols, provides predictability and reduces the inhumane impact of conflict. As we have seen in recent conflicts, State agents and non-State actors often indiscriminately attack civilians, in particular women, children and the elderly. The use of force is also sometimes neither necessary nor proportionate. The protection of civilians in times of conflict is an essential obligation of humanitarian law.

39. In my report to the Commission on Human Rights at its fifty-sixth session (E/CN.4/2000/12), I considered the quest for the prevention of gross violations of human rights and of conflicts as a defining issue of our time. The report identified a number of areas where action was needed to prevent gross violations of human rights. They included the crime of genocide, racial discrimination, slavery, trafficking in human persons and impunity. The report also defined some preventive measures, particularly with regard to the right to development and human rights education.

40. In my report to the General Assembly at its fifty-sixth session (A/56/36 and Add.1 and Corr.1), I explained how OHCHR addressed the issue of operational and structural prevention of human rights violations and conflict. I considered the important role played by the United Nations human rights mechanisms, particularly the special rapporteurs and the treaty bodies, and emphasized the need for States to cooperate with them. I am pleased that 35 States have informed my Office in writing that they have issued an open invitation to the human rights mechanisms to visit, and I encourage other States to adopt this approach.[3] I also stressed my commitment to enhancing States' capacity in the human rights area, as well as the need to end impunity for serious human rights violations.

C. Reinforcing equality, tolerance and respect

41. It is widely acknowledged that racism and intolerance can be both a cause and a consequence of violence, and therefore of insecurity. Despite the difficulties it faced, the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance was able to adopt a comprehensive anti-discrimination agenda. Implementing this framework is now more relevant than ever.

42. The Durban Declaration and Programme of Action addresses the plight of victims of racism, racial discrimination, xenophobia and related intolerance. It recognizes the suffering of many groups, particularly Africans and people of African descent, Asians and people of Asian descent, indigenous peoples, Jews, Muslims, Arabs, those subjected to anti-Semitism and Islamophobia, the Palestinian people, Roma/Gypsies/Sinti/Travellers, migrants, refugees, asylum-seekers, displaced persons, minorities and others. By paying attention to such specific groups and their grievances, Durban provided a basis for dealing with a major dimension of human insecurity.

43. Terrorism often stems from extreme hatred, and leads to more hatred. Behind the resort to terrorism is an assumption of the diminished humanity of the victims. The Durban anti-discrimination agenda offers an antidote to terrorism. It affirms the richness of human diversity, and therefore respect for every human life. The Durban Declaration affirms that all peoples and individuals have contributed to the progress of the civilization and cultures that form the common heritage of humanity. It recognizes that promotion of tolerance, pluralism and respect for diversity would produce more inclusive societies. The indispensable role of civil society, including that of non-governmental organizations and the media, in promoting and enhancing the Durban anti-discrimination efforts is particularly highlighted.

44. As a result of the terrorist attacks and their aftermath, some are taking approaches that deepen the divisions between civilizations. This is damaging. The Durban documents encourage an honest and robust dialogue between cultures and civilizations. They encourage each society to reflect on its own enlightened and humane values that need to be nourished and proclaimed. They envisage a common ground based on the inherent dignity and equal rights of all human beings and the fundamental principles of justice.

45. For most people in the world, religion, spirituality and belief contribute to enhancing the inherent dignity and worth of every human person. Religion, however, is sometimes used and abused to fuel hatred, superiority and dominance. The politicization of culture and religion creates an intolerant environment. The rise of religious intolerance, especially Islamophobia, is a cause of serious concern.

46. Last year, an International Consultative Conference on School Education in relation with Freedom of Religion and Belief, Tolerance and Non-Discrimination took place in Madrid from 23 to 25 November. This significant event, which was organized within the framework of the mandate of the Special Rapporteur on freedom of religion or belief, aimed at contributing to the promotion and protection of human rights by redesigning the role that school education should play, with a view to eliminating all forms of intolerance and discrimination based on religion or belief. The declaration resulting from the meeting suggested ways and means by

which curricula and textbooks should contribute to the promotion of tolerance and non-discrimination, as well as of the legitimate self-representation through full respect for how others are represented.

47. Significant issues were developed during the formulation of the Durban Programme of Action. For instance, there is a focus on efforts to identify the causes, forms and contemporary manifestations of racial discrimination. Concrete steps were recommended in the area of prevention, education and protection at the national, regional and international levels, including the adoption of legislative, judicial and administrative measures, the prosecution of racist acts, the development of independent national institutions, and the enhancement of affirmative action policies. It also recognizes the need for effective remedies, recourse, redress and similar measures at the national, regional, and international levels. Amongst the most significant parts of the Durban Declaration and Programme of Action are the strategies developed to combat racism, racial discrimination, xenophobia and related intolerance and thereby achieve full and effective quality. These strategies should constitute an essential component of the international agenda to foster social harmony and address the causes of insecurity.

48. OHCHR is spearheading the implementation of the Durban Declaration and Programme of Action and is working with States, intergovernmental bodies and non-governmental organizations to ensure a sustained follow-up. Steps taken at OHCHR in this regard include the establishment of an anti-discrimination unit to strengthen the Office's capacity to promote equality and non-discrimination. The unit will focus on promoting the implementation of the Durban outcome, inter alia, through exchanges of experience and technical cooperation activities aimed at combating racism, and increasing awareness of the work of the Committee on the Elimination of Racial Discrimination.

49. Human Rights Day 2001 focused on an initial stocktaking of activities and plans for the implementation of the anti-discrimination agenda. OHCHR will follow up with a second stocktaking on 21 March, International Day for the Elimination of Racial Discrimination. While OHCHR, the United Nations specialized agencies and regional organizations have an important role to play in advancing the Durban Plan of Action, it rests with States, working in cooperation with civil society, to play the principal role in implementing it.

D. Fulfilling human rights commitments

50. The key to enhancing human security is the pursuit of a comprehensive human rights agenda. The 139 provisions of the 1993 Vienna Declaration and Programme of Action continue to provide the world with all the elements of a comprehensive, universal human rights approach. They offer a road map to guide States, civil society and the United Nations in addressing many of the root causes of insecurity. June 2003 will mark the tenth anniversary of the Vienna Declaration and Programme of Action. This will present each State, and the international community as a whole, with the opportunity to reflect on how much of the Vienna Declaration and Programme of Action, which all endorsed, has been implemented.

51. One recommendation made in Vienna was that States ratify the international human rights conventions. There has been significant progress in ratifying the six core treaties. In 1990 the total number of States parties to the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and International Convention on the Elimination of all Forms of Racial Discrimination was 272. By 15 February 2002, this figure had increased to 437.[4] However, implementation remains a major concern. Impunity for those who have committed gross violations of human rights and grave breaches of humanitarian law remains rampant. Impunity for violations induces an atmosphere of fear and terror. It produces unstable societies and de-legitimizes Governments. It encourages terrorist acts and undermines the international community's effort to pursue justice under the law. The coming into force of the Rome Statute of the International Criminal Court will strengthen the capacity of international law to respond to impunity.[5] But it is only one of the significant and necessary building blocks. The most effective measures to ensure that the domestic legal and judicial systems do not tolerate impunity are those that are taken at the local level.

52. Pursuing a comprehensive human rights approach requires that States give equal importance to all rights, whether civil, cultural, economic, political or social. The Vienna Declaration and Programme of Action reaffirmed that all human rights are universal, indivisible, interdependent and interrelated. It stressed that the international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.

53. Extreme poverty remains amongst the most serious causes of human insecurity. The pursuit of a rights-based approach to development and the right to development are crucial in addressing the root causes of conflict and terrorism. The Vienna Declaration and Programme of Action laid emphasis on the right to development, and reiterated that the human person is the central subject of development. This was reinforced in the Millennium Declaration of the General Assembly (resolution 55/2), which pledged to "spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected". The Millennium Declaration also highlighted States' commitment "to making the right to development a reality for everyone and to freeing the entire human race from want".

54. The Vienna Declaration and Programme of Action identified many other challenges to the establishment of inclusive, participatory and coherent democratic societies. For instance, the document addresses the rights of vulnerable groups such as indigenous peoples, ethnic minorities, people living under foreign occupation, women, children, displaced persons, refugees, migrants, and persons with disability. It also recognizes that gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. The Vienna documents also laid emphasis on the positive role of NGOs and called on States to work in partnership with them at the local, national and international levels. The enduring importance of the Declaration and Programme of Action can be seen in the degree to which its many dimensions shape our human rights thinking and policy today, as was underlined by the Millennium Declaration.

IV. FINAL REMARKS

55. Despite global uncertainty, it is essential for everyone to uphold the universal human rights standards that were created collectively. Acts, methods and practices of terrorism aim at the destruction of these standards. This is why it is essential that all States implement the operational measures sought by the Security Council in resolution 1373 (2001) in a manner consistent with human rights. At the same time, building a durable global human rights culture, by asserting the value and worth of every human being, is essential if terrorism is to be eliminated. In other words, the promotion and protection of human rights should be at the centre of the strategy to counter terrorism.

56. States have resolved to respect fully and uphold the Universal Declaration of Human Rights.[6] The Declaration starts with solemn concepts. It reminds us that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace. It emphasizes that disregard and contempt for human rights have resulted in barbarous and outrageous acts. It pledges that the United Nations will work for a world free of fear and want. Continuing to work for a world free of fear and want is the best way for the international community to address the sense of insecurity in today's world.

57. Democratic values, public accountability, and the checks and balances built into the system of government must remain strong, even in difficult times. The legislature and the judiciary have a significant role to play in discharging States' obligations under international law. Supporting an independent judiciary is an important part of the strategy to address the root causes of violence. An independent judiciary is part of the essential infrastructure for social harmony. Adjudicating disputes in a fair and objective manner reinforces confidence in the system of government. An independent judiciary is transparent; it not only ensures that justice is done, but that it is seen to be done. Its representative, and its members are selected on the basis of merit and without discrimination on the basis of race, ethnicity, gender, political opinion, or other discriminatory grounds. It is effective in checking abuse and providing remedies.

58. The role of civil society, in particular human rights defenders, is more crucial than ever. Explaining the delicate and fair balances in human rights law, and encouraging its enforcement at all times, is vital. In several parts of the world, human rights defenders have been harassed and persecuted for their human rights activities. Such attacks undermine the collective effort to confront violence and terrorism.

59. In the immediate aftermath of 11 September, some suggested that human rights could be set aside while security was being achieved. Now, however, there is wide recognition that ensuring respect for human rights and dignity throughout the world is the best long-term guarantor of security. Such an approach focuses attention on the elimination of the root causes of violence and therefore isolates terrorists. The Commission on Human Rights is looked to for leadership on the basis of these values, which are the international community's best answer to terrorism.

Notes

[1] The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families embodies some basic rights for migrant workers and their families, including the freedom from discrimination; the right to life; freedom of thought; freedom of opinion; the right to privacy; freedom from arbitrary deprivation of property; the right to liberty and security of person and effective protection against violence, physical injury, threats and intimidation; the right to be treated with humanity and respect; and the right not to be subject to collective expulsion measures.

[2] The measures include criminalizing the collection of funds for terrorist acts and freezing the assets of terrorists; refraining from providing any support to entities or individuals involved in terrorist acts; preventing terrorist acts through early warning and exchange of information with other States; denying safe haven to terrorists; preventing the State's territory from being used by terrorists or supporters of terrorists; criminalizing terrorist acts and prosecuting supporters of terrorism; assisting other States in prosecuting terrorism and the financing of terrorist acts; preventing the movement of terrorists through effective border controls and effective issuance of identity documents, including measures to prevent their forger; intensifying and accelerating the exchange of operational information concerning terrorists; ensuring that refugee status is not abused by terrorists.

[3] These States are: Austria, Belgium, Bulgaria, Canada, Costa Rica, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Guatemala, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Turkey, United Kingdom of Great Britain and Northern Ireland.

[4] There are 148 ratifications of the International Covenant on Civil and Political Rights, 128 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and 161 of the International Convention on the Elimination of all Forms of Racial Discrimination.

[5] As of 10 February 2001, 52 States had ratified the Rome Statute of the International Criminal Court. The Statute will come into force when 60 States have deposited their instrument of ratification. Several States have indicated that their process of ratification has reached its final stages.

[6] See, for instance, the Millennium Declaration of the General Assembly.

Annex

Proposals for "further guidance" for the submission of reports pursuant to paragraph 6 of Security Council resolution 1373 (2001)

(intended to supplement the Chairman's note on "Guidance" of 26 October 2001)

Compliance with international human rights standards

I. GENERAL GUIDANCE: CRITERIA FOR THE BALANCING OF HUMAN RIGHTS PROTECTION AND THE COMBATING OF TERRORISM

1. The Security Council has asked States to take specific measures against terrorism. States' action in this area should also be guided by human rights principles contained in international law.

2. Human rights law strikes a balance between the enjoyment of freedoms and legitimate concerns for national security. It allows some rights to be limited in specific and defined circumstances.

3. Where this is permitted, the laws authorizing restrictions:

(a) Should use precise criteria;

(b) May not confer unfettered discretion on those charged with their execution.

4. For limitations of rights to be lawful they must:

(a) Be prescribed by law;

(b) Be necessary for public safety or public order, i.e. the protection of public health or morals and for the protection of the rights and freedoms of others, and serve a legitimate purpose;

(c) Not impair the essence of the right;

(d) Be interpreted strictly in favour of the rights at issue;

(e) Be necessary in a democratic society;

(f) Conform to the principle of proportionality;

(g) Be appropriate to achieve their protective function, and be the least intrusive instrument amongst those which might achieve that protective function;

(h) Be compatible with the objects and purposes of human rights treaties;

(i) Respect the principle of non-discrimination;

(j) Not be arbitrarily applied.

5. Comments on the compliance of adopted anti-terrorist measures with international human rights could refer to whether the measures are compatible with, for instance:

(a) The right to personal liberty (International Covenant on Civil and Political Rights (ICCPR), art. 9);

(b) Freedom of movement (ICCPR, art. 12), including the right of all persons to leave any country, including one's own country (ICCPR, art. 12, para. 4);

(c) The right to a fair trial, particularly in the determination of any criminal charge (ICCPR, arts. 14 and 15);

(d) The protection against arbitrary interference with privacy, family, home or correspondence and against unlawful attack on honour and reputation (ICCPR, art. 17);

(e) Freedom of expression (ICCPR, art. 19);

(f) The right to manifest one's religion or belief (ICCPR, art. 18);

(g) The right of peaceful assembly (ICCPR, art. 21);

(h) Freedom of association (ICCPR, art. 22);

(i) Rights of participation (ICCPR, art. 25);

(j) The right of persecuted persons to seek asylum in the territory or jurisdiction of a State (Universal Declaration of Human Rights (UDHR), art. 14 and the Convention relating to the Status of Refugees), and the right of non-refoulement (ICCPR, art. 7 and other more specific treaty provisions);

(k) Procedural guarantees related to deportation of an alien (in particular, ICCPR, arts. 9, 13 and 14).

II. SPECIFIC ISSUES

6. States should submit a list of those international human rights treaties that they have ratified and need to be taken into account when considering their measures under resolution 1373 (2001). Pertinent in this respect are, among others: ICCPR, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Rights of the Child, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, European Convention

for the Protection of Human Rights and Fundamental Freedoms (ECHR), American Convention on Human Rights (ACHR), African Charter on Human and Peoples' Rights (African Charter), and Arab Charter on Human Rights (Arab Charter).

7. States should report on whether their legislation includes the notion of "terrorism", "act of terrorism", or any similar notion, and whether there exists a definition of such terms in their legislation or case law. In particular, reports should indicate whether such notions cover non-violent activities and are used autonomously as a basis for criminal conviction, deprivation of liberty or other coercive measures, or whether they are used as a qualification of acts that would, even without such a qualifying factor, constitute a crime under domestic law. Attention should also be given to ICCPR article 15 and comparable provisions in regional human rights treaties according to which no one may be held guilty of any criminal offence unless the act or omission constituted a criminal offence at the time when it was committed. (See UDHR, art. 11; ECHR, art. 7; ACHPR, art. 9; African Charter, art. 7.)

8. With reference to Council Resolution 1373 (2001), paragraph 2, subparagraphs (c) and (g), paragraph 3, subparagraphs (f) and (g), and the questions presented in the Chairman's note under those headings, States should include in their reports responses to the following questions:

(a) When taking the measures in question, how is compliance secured with: the right of all persons to leave any country, including one's own country (ICCPR, art. 13, para. 4; UDHR, art. 13); the right of persecuted persons to seek asylum when entering the territory or jurisdiction of the State (UDHR, art. 14; Refugee Convention, regional instruments, e.g. African Charter, art. 12; ACHR, art. 22, and the right of non-refoulement (ICCPR, art. 7; Torture Convention, art. 3; Refugee Convention, art. 33; ECHR, art. 3, ACHR, art. 22)?

(b) Does the State recognize the real risk of capital punishment per se as an obstacle to refoulement (for instance, on the basis of constitutional provisions, regional human rights instruments, the Convention on the Rights of the Child or the Second Optional Protocol to the ICCPR), or does it apply the rule of non-refoulement to capital punishment only in cases where the specific circumstances of the application of the death penalty are recognized by the State either as a violation of the right to life (e.g. imposition of the death penalty for other than the most serious crimes, non-compliance with all guarantees of fair trial in proceedings leading to the imposition of capital punishment; see ICCPR, art. 6), or as inhuman, cruel or degrading treatment (e.g. owing to the method of execution, prolonged stay on death row prior to execution, or further compelling circumstances; see ICCPR, art. 7 and comparable provisions in regional human rights treaties, e.g. ECHR, art. 3)?

(c) Are procedural guarantees related to deportation of an alien respected, including the requirement of an individualized decision, the right to present reasons against expulsion, the right to have one's case reviewed by an authority independent from the decision-making authority, and the right to be represented in such proceedings? If these requirements are not followed in all cases, how is the test of "compelling reasons of national security" applied and monitored (see ICCPR, art. 13; Refugee Convention, art. 32; regional instruments, e.g. ECHR, Protocol No. 7, art. 1)?

9. States are requested to report on whether, and to what extent, human rights enshrined in international treaties ratified by them are affected by way of interference, limitation or restriction in the course of the State's measures taken to implement the resolution. In particular, attention should be paid in this respect to:

(a) The right to personal liberty (including the use of various forms of administrative detention and possible deviation from the requirement of judicial determination without delay of the lawfulness of any form of detention (see ICCPR, art. 9; Convention on the Rights of the Child, art. 9.4; regional instruments, e.g. ACHPR, art. 7; ECHR, art. 5; African Charter, art. 6);

(b) Freedom of movement (ICCPR, art. 12; UDHR, art. 13; ACHR, art. 22; African Charter, art.12; ECHR, Protocol No. 4, art. 2);

(c) The right to a fair trial, particularly in the determination of any criminal charge (ICCPR, arts. 14 and 15; UDHR, art. 10; ACHR, art. 8; ECHR, art. 6; African Charter, art. 7);

(d) The protection against arbitrary interference with privacy, family, home or correspondence and against unlawful attack on honour and reputation (ICCPR, art. 17; UDHR, art. 12; regional instruments, e.g. ACHR, art. 11; ECHR, art. 8);

(e) Freedom of expression (ICCPR, art. 19; UDHR, art. 18; regional instruments, e.g. ACHR, art. 13; ECHR, art. 10; African Charter, art. 9);

(f) The right to manifest one's religion or belief (ICCPR, art. 18; UDHR, art. 18; regional instruments, e.g. ACHR, art. 12; ECHR, art. 9; African Charter, art. 8);

(g) The right of peaceful assembly (ICCPR, art. 21; UDHR, art. 20; regional instruments, e.g. ACHR, art. 15; ECHR, art. 11);

(h) Freedom of association (ICCPR, art. 22; UDHR, art. 20; regional instruments, e.g. ACHR, art. 16; ECHR, art. 11; African Charter, art. 10; ILO conventions, e.g. No. 87 on Freedom of Association and the Right to Organize);

(i) Rights of participation (ICCPR, art. 25; UDHR, art. 21; regional instruments, e.g. ACHR, art. 23; African Charter, art. 13).

10. In their reports, States are requested to provide justification for any such interference, restrictions or limitations. As some (but not all) of the international treaty provisions referred to above include a specific clause on the permissibility of restrictions, States should explain how their measures are in compliance with such clauses. Typically, in order to be permissible a restriction must (a) be prescribed by law; (b) serve a specific legitimate aim; and (c) be deemed necessary; this requirement also includes the test of proportionality. In order to facilitate States in their reporting, attention is drawn to General Comment No. 27 of the Human Rights Committee (on freedom of movement) (CCPR/C/21/Rev.1/Add.9) as the most recent authoritative guideline in the issue of permissible limitations (see, in particular, paras. 11-18). The general guidance on the balancing of human rights with security concerns contained in paragraph 1 of the present note should also be applied.

11. States are requested to clarify whether measures taken to implement the resolution include any measures that would constitute derogation from their international human rights obligations (see ICCPR, art. 4 and corresponding provisions in regional human rights treaties, e.g. ECHR, art. 15; ACHR, art. 27). In particular, States should respond to the following issues:

(a) Does it understand the current situation to constitute a public emergency which threatens the life of the nation? Has such public emergency been officially proclaimed? Has it submitted the required notification of its measures derogating from its human rights commitments (as required by ICCPR, art. 4, para. 3; ECHR, art. 15, para. 3; ACHR, art. 27, para. 3)?

(b) Alternatively, are those of its measures taken in pursuance of the resolution that would constitute derogation from its international human rights obligations subject to a separate official proclamation of a state of emergency before they become operative? Do the domestic legal provisions enabling such measures of derogation to be taken at a later stage include safeguards to secure compliance with international human rights obligations, including ICCPR, article 4, if and when such proclamation is made?

(c) Has the State taken into account General Comment No. 29 of the Human Rights Committee on states of emergency (CCPR/C/21/Rev.1/Add.11) when ensuring that its measures entailing derogation from human rights are in compliance with ICCPR, article 4?